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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE SOUND
RETIREMENT TRUST,

Plaintiff,

v.

WIITAMAKI JEWELRY STORE, INC.,
UBI No. 141006906, and MICHAEL
GIRON, a Washington Resident, jointly
and severally,

Defendants.

NO.

COMPLAINT FOR COLLECTION OF
EMPLOYER WITHDRAWAL
LIABILITY

For its complaint, Plaintiff alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is the Board of Trustees of the Sound Retirement Trust (“Trust”). The Trust is an “employee pension benefit plan” as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1002(2), and a “multiemployer plan” as defined in ERISA § 4001(a)(3), 29 U.S.C. § 1301(a)(3). Plaintiff is the “plan sponsor” of the Trust, as defined in ERISA § 4001(a)(10), 29 U.S.C. §

COMPLAINT FOR COLLECTION OF EMPLOYER
WITHDRAWAL LIABILITY - 1

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1 1301(a)(10).

2 2. Defendant Wiitamaki Jewelry Store Inc. (“Wiitamaki”) is a Washington state
3 corporation having its principal business location in Aberdeen, Washington.

4 3. Wiitamaki is an “employer” as defined in ERISA §3(5), 29 U.S.C. § 1002(5).

5 4. Michael Giron is a resident of Washington State, the owner of Wiitamaki,
6 and he owns the land upon which Wiitamaki operated.

7 5. This Court has jurisdiction over this action pursuant to ERISA §§ 4301 and
8 4221(b), 29 U.S.C. § 1451 and 29 U.S.C. § 1401(b), respectively.

9 6. Venue is properly laid in this Court pursuant to ERISA § 4301(d), 29 U.S.C.
10 § 1451(d), because the Trust is administered within this judicial district.

11 **II. CLAIM FOR RELIEF:**
12 **SOUND RETIREMENT TRUST WITHDRAWAL LIABILITY**

13 7. The Trust re-alleges the facts set forth in paragraphs 1 through 6 above as if
14 stated fully herein and further allege as follows:

15 8. The “plan year” of the Trust for purposes of ERISA § 4205, 29 U.S.C. §
16 1385, begins July 1st and ends the following June 30th.

17 9. Prior to August 2016, Wiitamaki was obligated to make employer
18 contributions to the Trust on behalf of certain employees under the terms of one or more
19 collective bargaining agreements.

20 10. On August 7, 2016, Wiitamaki permanently ceased to have an obligation to
21 contribute to the Trust.

22 11. On August 7, 2016, Wiitamaki had a complete withdrawal from the Trust for
the purposes of ERISA § 4203, 29 U.S.C. § 1383.

1 12. As a result of its complete withdrawal, the Trust determined that Wiitamaki
2 owes \$256,574.00 in withdrawal liability.

3 13. By letter dated November 30, 2017, the Trust notified Wiitamaki in writing
4 of its withdrawal liability assessment and demanded payment in accordance with a
5 withdrawal liability installment schedule which requires 80 quarterly payments of
6 \$2,444.50. The first payment was due January 1, 2018.

7 14. Wiitamaki has not asked for a review of the assessment or requested
8 additional information or documentation from the Trust.

9 15. Wiitamaki did not request arbitration in accordance with ERISA § 4221(a);
10 29 U.S.C. § 1401(a).

11 16. Wiitamaki made its first five quarterly payments that were due on January 1,
12 2018, April 1, 2018, July 1, 2018, October 1, 2018, and January 1, 2019.

13 17. Wiitamaki has not made its quarterly payments that were due on April 1,
14 2019 and July 1, 2019, respectively.

15 18. By letters dated June 5, 2019 and June 19, 2019, the Trust notified Wiitamaki
16 that the payments had not been received and that the outstanding payments must be made
17 within 60 days to avoid a default pursuant to Section 4219(c)(5) of ERISA, 29 U.S.C.
18 § 1399(c)(5).

19 19. More than sixty days have now passed since the Trust's June 5, 2019 and
20 June 19, 2019 letters. Wiitamaki failed to make the required payment and is accordingly in
21 default pursuant to Section 4219(c)(5) of ERISA, 29 U.S.C. § 1399(c)(5).

22 20. Pursuant to ERISA § 4221(b)(1), 29 U.S.C. § 1401(b)(1), Wiitamaki owes

1 the Trust immediate payment of \$269,825.75.

2 21. Under the terms of the Trust Agreement and ERISA §§ 4301(b), 515, and
3 502(g)(2), Wiitamaki is obligated to pay liquidated damages, interest, reasonable attorney's
4 fees, and costs and expenses of suit to be determined upon motions at trial. 29 U.S.C. §§
5 1451(b), 1145, 1132(g)(2).

6 **III. CLAIM FOR RELIEF III - CONTROL GROUP LIABILITY**

7 22. The Trust re-alleges the facts set forth in paragraphs 1 through 21 as above as
8 if stated fully herein and further allege as follows:

9 23. Michael Giron was the owner of Wiitamaki at the time of its withdrawal from
10 the Trust.

11 24. Michael Giron owned, in his personal capacity, the real estate which was
12 rented to or used by Wiitamaki at the time of Wiitamaki's withdrawal from the Trust.

13 25. Michael Giron was operating as a "trade or business" by renting or allowing
14 Wiitamaki to use the real estate which he owned.

15 26. Michael Giron is in the same controlled group as Wiitamaki due to common
16 control.

17 27. Accordingly, Michael Giron is jointly and severally liable for the immediate
18 payment of \$269,825.75 to the Trust in withdrawal liability because he is in the same control
19 group as Wiitamaki as defined by ERISA § 4001(b)(1); 29 U.S.C. § 1301(b)(1).

20 28. Michael Giron is jointly and severally liable for the payment of liquidated
21 damages, interest, reasonable attorney's fees, and costs and expenses of suit, to be
22

determined upon motions or at trial, as provided by the terms of the Trust Agreements and Sections 4301(b), 515, and 502(g)(2) of ERISA, 29 U.S.C. §§ 1451(b), 1145, 1132(g)(2).

WHEREFORE, plaintiff prays for judgment as follows:

- (a) For withdrawal liability to Sound Retirement Trust from Wiitmaki Jewelry Store Inc. in the amount of \$269,825.75 with interest thereon determined in accordance with ERISA §§ 4219(c)(6) and 4221(b)(1); 29 U.S.C. §§ 1399(c)(6) and 1401(b)(1);
- (b) For withdrawal liability based on controlled group liability from Michael Giron, jointly and severally, in the amount of \$269,825.75 with interest thereon determined in accordance with ERISA §§ 4219(c)(6) and 4221(b)(1); 29 U.S.C. §§ 1399(c)(6) and 1401(b)(1);
- (c) For attorney fees and costs, pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g); and
- (d) For such other and further relief as this Court deems just and equitable.

DATED this 9th day of September, 2019.

/s/ Douglas M. Lash
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